

<sup>3</sup> Trial Calendar/ Plea Hearing: Pled Guilty/ PSI Ordered, *State of Delaware v. Jonathan S. Hall*, Crim. Id. No. 1507024327, D.I. 12 (Del. Super. Ct. Feb. 4, 2016).

Defendant to a sum of ten years of incarceration followed by transitioning levels of probation.<sup>4</sup>

2. On December 20, 2019, Defendant filed a Motion for Correction of Illegal Sentence<sup>5</sup> under Superior Court Criminal Rule 35(a),<sup>6</sup> a Motion for Appointment of Counsel<sup>7</sup> and a Motion for Postconviction Relief.<sup>8</sup>

3. Defendant filed no direct appeal from his convictions. Before the Court now is Hall's untimely motion for postconviction relief under Superior Court Criminal Rule 61.<sup>9</sup> Defendant's request for the appointment of counsel must be denied.

4. First, in order to qualify for the appointment of counsel, the Rule 61 motion must be timely filed. The Delaware Supreme Court has held that, "[t]he court will appoint counsel for an indigent movant's first *timely* postconviction

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<sup>4</sup> Defendant was sentenced as follows: (1) For the Firearm charge, Defendant received twelve years at Level V, suspended after ten years at Level V, for two years and six months at Level IV DOC Discretion, suspended after six months at Level IV DOC Discretion, for two years at Level III TASC; (2) For the Ammunition charge, Defendant received one year at Level V, suspended for one year at Level III TASC; (3) For the Tier 2 Possession charge, Defendant received one year at Level V, suspended for one year at Level II; and (4) For Resisting Arrest, Defendant received one year at Level V, suspended for one year at Level I. Defendant's probation runs concurrently. *See* Sentence: ASOP Order Signed & Filed on 4/14/16, *State of Delaware v. Jonathan S. Hall*, Crim. Id. No. 1507024327, D.I. 14 (Del. Super. Ct. Apr. 8, 2016).

<sup>5</sup> Defendant's Motion for Correction of Illegal Sentence, *State of Delaware v. Jonathan S. Hall*, Crim. Id. No. 1507024327, D.I. 20 (Del. Super. Ct. Dec. 20, 2019).

<sup>6</sup> DEL. SUPER. CT. CRIM. R. 35(a).

<sup>7</sup> *See generally* Def.'s Mot.

<sup>8</sup> Defendant's Motion for Postconviction Relief, *State of Delaware v. Jonathan S. Hall*, Crim. Id. No. 1507024327, D.I. 21 (Del. Super. Ct. Dec. 20, 2019).

<sup>9</sup> *Id.*

proceeding. For an indigent movant's *untimely* first postconviction proceeding . . . the court will appoint counsel only in the exercise of discretion for good cause shown, but not otherwise."<sup>10</sup> Here, the motion was not timely filed, instead filed after the one-year period had elapsed.

5. Second, counsel is to be appointed in Rule 61 motions stemming from guilty pleas only in where defendant has stated a substantial claim that he received ineffective assistance of counsel and has established that exceptional circumstances warrant the appointment of counsel.<sup>11</sup> Defendant's conviction resulted from a guilty plea. Here, Hall does not raise ineffective assistance of counsel allegations relating to his representation.<sup>12</sup> The instant "Motion for Appointment of Counsel" sets forth only that "he is indigent with no legal skills to prepare for his defense at his pending criminal matter . . . [and] the Court should take into consideration the nature of the charges, Defendant's financial resources and his efforts to retain counsel."<sup>13</sup>

6. Having again fully considered Hall's motion and the evidentiary record, Defendant has not set forth a substantial claim that he received ineffective assistance of counsel nor is there the existence of an exceptional circumstance that would give rise to the entitlement to the appointment of counsel. Since Defendant has failed to

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<sup>10</sup> *Collins v. State*, 93 A.3d 653 (Del. 2014)

<sup>11</sup> DEL. SUPER. CT. CRIM. R. 61(e)(2)(ii) and (iv).

<sup>12</sup> *Id.*

<sup>13</sup> Def.'s Mot. at page 2.

overcome the procedural hurdles warranting the appointment of counsel, the appointment of counsel is denied.<sup>14</sup> Accordingly, with such deficiencies, Hall's request for counsel fails to substantially comply with the requirements of Rule 61(e)(2).

**NOW, THEREFORE, IT IS ORDERED** that Defendant's Motion for Appointment of Counsel is **DENIED**.



Judge Vivian L. Medinilla

Original to Prothonotary

cc: Barzilai K. Axelrod, Deputy Attorney General  
Jonathan S. Hall, *pro se*  
Office of Conflict Counsel

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<sup>14</sup> See DEL. SUPER. CT. CRIM. R. 61(e)(2).